IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Bhura Vs. The State of Rajasthan & Others
(SB Civil Writ Petition No.6455/1999)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order: November 01, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Nitin Jain, for the petitioner.

None for respondents.

BY THE COURT:

Heard learned counsel for the petitioner.

2. The petitioner, a recorded tenant, was in actual possession of land khasra Nos.1824 and 1825 measuring 3 bigha 18 biswa situated in village Mor Tehsil Todaraisingh District Tonk. The land was a Muafi Mandir Land and against the name of Jagirdar the name of Muafi Mandir was recorded and petitioner was shown as agriculturist. After coming into force of Rajasthan Tenancy Act,1955 and Rajasthan Jagir Resumption Act, the petitioner was recorded as tenant of the land.

Thereafter about 30 years, in the year 1983 Tehsildar Todarai Singh moved application before Additional Collector Tonk that the said land was a Muafi Mandir land and has wrongly entered in the name of petitioner, therefore a reference be made under section 82 of Rajasthan Land Revenue Act for cancellation of entry recorded in the name of petitioner. The Additional Collector vide judgment dated January 23, 1986 referred the matter to Revenue Board.

3. The Board of Revenue vide judgment dated April 4, 1997 only hearing Deputy Government Advocate and without hearing the counsel for petitioner allowed the reference and cancel the khatedari rights of the petitioner. The petitioner moved application on April 23, 1997 for setting aside the ex-parte order dated April 4, 1997, which came to be dismissed on July 11, 1997. Thereafter the review application came to be dismissed on July 31, 1998. Against the orders dated January 23, 1986 of Additional Collector Tonk, April 4, 1997, July 11, 1997 and July 31, 1998 of the Board that the instant writ petition has been preferred by the petitioner.

4. Admittedly the respondents initiated the proceeding of reference on in the year 1983 after unreasonable delay of more than 30 years. There is nothing on record to show that fraud was played in getting the name entered in the record by the petitioner.

5. Division Bench of this court in Anandi Lal Vs. State of Rajasthan (1996 DNJ (Raj.) 100) indicated that to permit exercise of revisional powers under sections 82 and 232 of the Rajasthan Land Revenue Act,1956 (for short `1956 Act') after unreasonable delay would amount putting imprimatur of the courts on the unreasonable and arbitrary exercise of powers. In Mangi Lal Vs. State of Rajasthan (1998(1) WLC (Raj.) 625) it was however observed that where order has been obtained by fraud, the power of reference can be exercised even after the unreasonable delay.

6. In State of Rajasthan Vs. Teja [2005(2) WLC (Raj.) 53) indicated in para 10 thus:-

> “While it is true that the subject transfer is in violation of Section 42-B of

> the Act of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy/ khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the public officer and the private party has suffered (sic) public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the pre-requisites. Learned Single Judge has rightly set aside the order of the Board of Revenue."

7. Having closely analysed the material on record, I find that it is not a case where obvious manipulation has been perpetrated in the record. The name of petitioner entered in the revenue record was not founded on fraud, therefore the exercise of making reference after unreasonable delay would be unjust and unreasonable. Although sections 82 and 232 of the Rajasthan Land Revenue Act,1956 do not provide for the period of limitation, but concept of exercise of power in a reasonable manner inheres with it the concept of exercising the same within a reasonable time and if the power is not exercised within reasonable time, the invocation of the power after inordinate delay and the exercise of the same after unreasonable length of time would be illegal and void.

8. For these reasons, I allow the writ petition and set aside the impugned orders dated January 23, 1986 of Additional Collector Tonk, April 4, 1997, July 11, 1997 and July 31, 1998 of the Board. There shall be no order as to costs.

(Shiv Kumar Sharma),J.

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